

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MASSACHUSETTS**

IN RE: NETWORK ENGINES, INC.
SECURITIES LITIGATION

Civil Action No. 03-12529-JLT

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' AMENDED CONSOLIDATED COMPLAINT**

Defendants Network Engines, Inc., John Curtis, Douglas G. Bryant, and Lawrence A. Genovesi hereby move to dismiss with prejudice Plaintiffs' Amended Consolidated Complaint pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6).

In support of this Motion, Defendants submit the accompanying Memorandum of Law and Declaration of John A. Litwinski and state as follows:

1. Plaintiffs fail to state a claim upon which relief may be granted against each of the Defendants under the federal securities laws pursuant to Rule 10b-5 and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 78u-4 *et seq.* ("PSLRA"). Among other things, Plaintiffs fail to allege (a) any misstatement as required to state a claim under the federal securities laws; (b) a duty under the securities laws to disclose information beyond the information that Defendants did in fact disclose; (c) any facts indicating that adverse circumstances existed at the time Defendants made the complained-of statements; or (d) any facts giving rise to any inference of scienter, much less the strong inference required by the PSLRA;

2 Plaintiffs fail to allege fraud with particularity against each (or any) of the Defendants sufficient to meet the stringent requirements of the PSLRA and of Fed. R. Civ. P. 9b); and

3. Plaintiffs fail to state a claim upon which relief may be granted against the individual Defendants for control person liability under §20(a) of the Exchange Act, 15 U.S.C. § 78t(a), because plaintiffs fail to plead an underlying violation of the federal securities laws.

WHEREFORE, Defendants respectfully request that this Court:

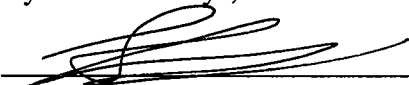
1. Dismiss the Amended Consolidated Complaint in its entirety and with prejudice;
- and
2. Grant such further relief as the Court deems just and proper.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), Defendants request a hearing on their Motion to Dismiss.

NETWORK ENGINES, INC., JOHN CURTIS,
DOUGLAS G. BRYANT, and LAWRENCE A.
GENOVESI,

By their attorneys,



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Daniel W. Halston (BBO #548692)
John A. Litwinski (BBO #650603)
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail-hand on August 13, 2004



Robin L. Alperstein (admitted *pro hac vice*)
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Dated: August 13, 2004